

## CRIMINAL REVISION.

Before Nasim Ali J.

TOFEL AHMAD MIYA

v.

EMPEROR.\*

1933

Nov. 22, 24.

*Public Ferry—Overloading of boat—Failure of lessee of the ferry to take steps against overloading—Negligence of the lessee—Criminal liability of the lessee—Indian Penal Code (Act XLV of 1860), s. 282.*

Where the lessee of a public ferry knew that boats were usually overloaded but took no steps against it and allowed his boatmen to overload them as they liked and in consequence a boat sank with some passengers,

*held* that the lessee was guilty of criminal negligence and liable under section 282 of the Indian Penal Code.

### CRIMINAL REVISION.

The material facts and arguments in the appeal appear from the judgment.

*Hamidul Huq Chaudhuri* for the petitioner.

*Anilchandra Ray Chaudhuri* for the Crown.

NASIM ALI J. This Rule is directed against the conviction of the petitioner under section 282 of the Indian Penal Code. The ground, on which the present Rule was issued, is that, in view of the fact that there is no evidence to show that the disaster was due to any act, omission and negligence, for which the petitioner is responsible, but that, on the contrary, he has been acquitted of the charge under section 25 of the Bengal Ferries Act for breach of the rules regarding the safety of the vessel and the passengers, the court below ought to have held that the petitioner is not criminally liable for the acts or omission or negligence of the *mâjhi*.

\*Criminal Revision, No. 725 of 1933, against the order of J. De, Sessions Judge of Noakhali, dated May 15, 1933, modifying the order of P. Ahmad, Deputy Magistrate (1st class Magistrate) of Noakhali, dated March 11, 1933.

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There can be no doubt that there had been negligence on the part of the *mâjhis*. The whole question is whether the lessee of the ferry, that is, the master, is liable for this offence. The learned magistrate has found that, from the circumstances, it can be gathered that over-loading, far from being an exception, is a rule and surely the lessee, who profits by the earnings, must have known about the facts of over-loading. The judge, on appeal, has found that the petitioner did not take proper precaution to ensure that his *mâjhis* did not over-load the boats. The question, therefore, is whether, on these findings, it can be said that the petitioner negligently caused to be conveyed, for hire, any person, by water, in any vessel, so loaded as to endanger the life of that person; criminal negligence is gross and culpable neglect or failure to exercise that reasonable and proper care to guard against injury either to the public in general or to the individual in particular, which, having regard to the circumstances, out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. In order, therefore, to decide whether there had been criminal negligence in a particular case, it is to be found out whether the person charged took such precaution as a prudent and a reasonable man would consider to be sufficient upon all the circumstances of the case. The petitioner is the lessee of public ferry and has the exclusive right to carry passengers across the turbulent Meghnâ river into the mouth of the Bay of Bengal. It was, therefore, his incumbent duty, particularly in the middle of the monsoon, to see that the safety of the passengers is not in any way endangered by over-loading. It appears to me that the petitioner did not take any precaution to ensure that his *mâjhis* did not over-load. There was gross negligence on his part, inasmuch as he allowed the *mâjhis* to load the boats in any way they liked. The accused certainly knew that over-loading, particularly in the middle of monsoon, would be dangerous and,

as a prudent man, he should have given definite instruction to that effect, in view of the carrying capacity of the boat. He should have also taken steps to see that the *májhis* carry out the instruction relating to the loading of the boats. It was culpable negligence on his part to leave the whole thing in the hands of the boatman and thus to leave the passengers to their fate.

In view of these facts and circumstances, I am of opinion that the petitioner has been rightly convicted under section 282 of the Indian Penal Code. The Rule is, accordingly, discharged.

*Rule discharged.*

G. K. D.

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*Tofel Ahmal*

*Miyz*

v.

*Emperor.*

*Nasim Ali J.*